

Forum

Smoothing Out the Approval Process: A Developer's Viewpoint

Stacey A. Ponticello Russell Berusch

W. Whitfield Morrow is a president of Fraser, Morrow, Daniels & Company in Research Triangle Park, North Carolina. This development firm specializes in high quality, large-scale commercial, office, and residential projects. One of the firm's current projects, still in the development stage, is Rosemary Square, which is a public-private venture in Chapel Hill that serves as an important case study on development negotiations in North Carolina.

Mr. Morrow earned his undergraduate degree from Davidson College and his MBA from Harvard University.

CP: Your company's repertoire of development projects, especially in the Southeast, is extensive. Can you begin by providing us with an example of the kind of experiences you've had with the development approval/negotiations process?

Morrow: Early in my career, while involved in the development of Sea Pines Plantation on Hilton Head, our company developed virtually without a public approval process. We did whatever we wanted and imposed our own restrictions on ourselves. Later, I had another set of experiences working for the State of North Carolina, trying to clean up areas that were done without any kind of detailed approval process. So, when you don't have a detailed approval process, you open yourself up to a very wide range of potentially negative effects. On the down side, you can have trailers on the beach spewing sewage, if someone wants to be entirely exploitative. On the upside, though, you could end up with something like Sea Pines Plantation which is much better done than anything that has resulted from a public approval process.

What the public approval process does is narrow the range of possible things that can happen. I think in many cases it eliminates the very best things that can happen, but it also prevents the very worst things from happening. And in many areas which have very tightly controlled approval processes, we are seeing the lowest common denominator of development that

is approvable. So we are only getting "approvable" projects, and everything tends to look the same. The streets are all exactly the same width with the same number of trees on each side; you end up with an army barracks kind of development process. But it also eliminates the very intense development problems that you get when some people exploit the lack of control. What developers need to do is make sure that the rules and regulations of the process allow for good things to happen. Rather than fight every kind of control, I think development professionals should be a part of that process of creating the rules and regulations so that you can allow innovative and appropriate approaches.

CP: At what point in the development process do you usually begin talking to planners, board members, citizen groups and the like?

Morrow: As a matter of company policy we go in as soon as we have a piece of land identified and talk with the planners and staff to make sure we have all the rules in place. In many cases we don't get all the information we need, and we have some surprises later on, but we've learned that disclosing as much as possible up front saves headaches later.

The problem we've seen is that the planning staff frequently doesn't have time to deal with a proposed development until you're way into the approval process. We often produce documents, maps, and plans

Russell Berusch is a Master's Candidate in the Department of City and Regional Planning at the University of North Carolina at Chapel Hill.

Stacey A. Ponticello received a Master's Degree from the Department of City and Regional Planning at the University of North Carolina at Chapel Hill in 1986.

and go through a lot of expense before getting meaningful conversation and review from the planning department.

CP: You mentioned that planners' lack of time to review pre-development proposals is a problem. Are there gaps in planners' training that also make dialogue difficult?

Morrow: Until recently, a lot of planning schools have trained planners to primarily focus on the public policy and design kinds of questions. They were trained to believe that the developer was their enemy. They thought their job was to limit growth and to stop developers from messing things up. In order for planners to be truly effective today, however, they should be equipped with training in finance and politics which will enable them to more fully understand matters of concern to developers. So much of what's done today in any growing area is really a public/private venture, and development companies must adhere to the rules prescribed by the town.

CP: What about formalizing the development negotiations process—setting up rules requiring developers and neighborhood groups to enter the process early on in order to avoid conflicts that might emerge later?

Morrow: I think there ought to be a predevelopment conference where the development company works with the planning staff to outline all the major issues that need to be dealt with. If it's a major impact project affecting existing neighborhoods, then those neighborhoods ought to be part of early discussions, because any identifiable problems can usually be cured up front. I think, in the development business, the thing we fear the most is getting six months or twelve months into a process and then having something new introduced that requires going back and changing a lot of things. It's enormously expensive to make changes at that point.

CP: Can you put this idea of a predevelopment conference in the context of Rosemary Square? Was there any attempt to bring together conflicting forces?

Morrow: The Rosemary Square project has gone through hundreds of review sessions—with the planning staff, the town council, the Planning Board, the Historic District Commission, the Appearance Commission and other citizen groups that have had to review the project. In addition to that it went through numerous public meetings. Subsequently, some people expressed their opinions two years into the process.

The public participation process, while being very valuable if done in the proper sequence and with proper motivation, can be dangerous if abused.

CP: At what point in the approval process is it optimal to invite citizen participation?

Morrow: I think the critical point for citizen participation begins as early as the comprehensive planning stage, in setting community goals and neighborhood guidelines so that residents have said ahead of time, before any project has been proposed, what they would like the community to look like.

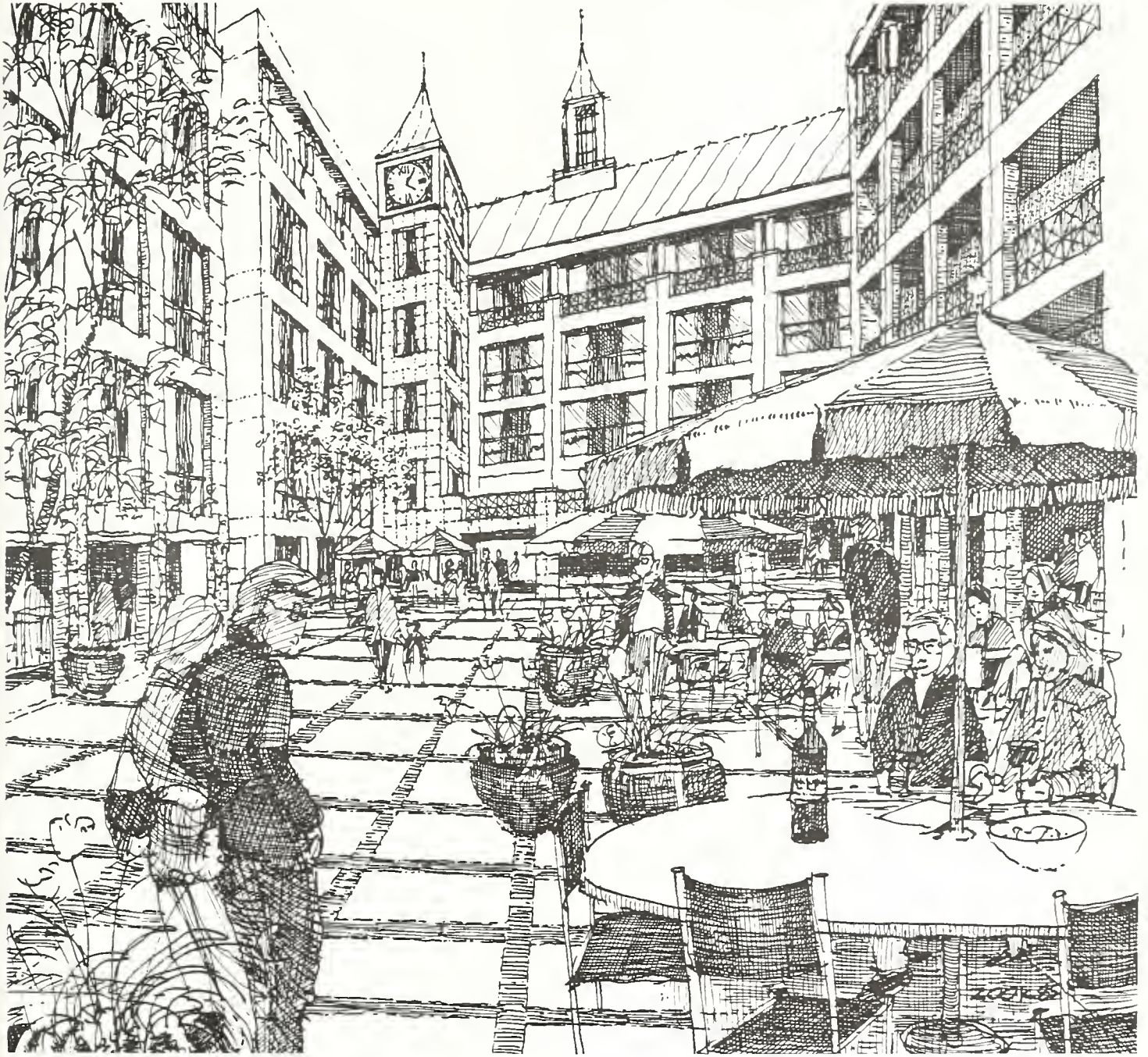
Early in a complex development process, the developer and the staff are learning how to deal with anything that's new or different. I think technical issues need to be generally worked out prior to having detailed public participation. In most communities there's a zoning process that sets the guidelines. And that's where people should participate, whether or not there's a project proposed for the area.

The most difficult thing about citizen participation is that many citizens who choose to participate do so only when they oppose something. They don't do it in a pro-active way. More importantly, the huge majority never expresses an opinion publicly. So, if we set up a very formal process, it may only provide a forum for the people who want to complain. This would not be productive.

As it stands, a lot of people wait until a project is under construction before voicing their opinions. It's unfortunate that you can't identify ahead of time everybody whose got a legitimate interest in a project and can invite them to a review session. Perhaps the planning department should do that. Maybe the planning department should identify any project that's likely to be controversial and get the appropriate people from the community to participate in the process early or at least give some guidance about what would be acceptable or not acceptable.

CP: In the case of Rosemary Square did you feel that when the going got tough and the citizens became more vocal in their objections, the city didn't do its part in helping to guide you through the approval process? Because the project is a joint venture with the city you may have expected greater assistance in getting through the rough spots.

Morrow: No, I don't think the city abandoned us in any way. The difficult thing in the Rosemary Square process, however, is that it's a very long process. The



Architect's sketch of proposed Rosemary Square development

political players change, opinions change for various reasons, and some people don't feel ethically bound to live up to the commitments made by their predecessors. I think that's wrong. But that's reality.

CP: How would you like to see this remedied?

Morrow: Well, I think the process is healthy in general, except for when it's taken too far. When doing a complex project you expect a detailed review. In the Rosemary Square case I think the project has benefited some by the long review and by some of

the subsequent changes that have been made. But I think we're past the point of that being beneficial as we approach final construction approval. After being selected by the council and having the project design and scope approved, we've invested \$1.1 million in the project, in good faith, responding to town review requirements.

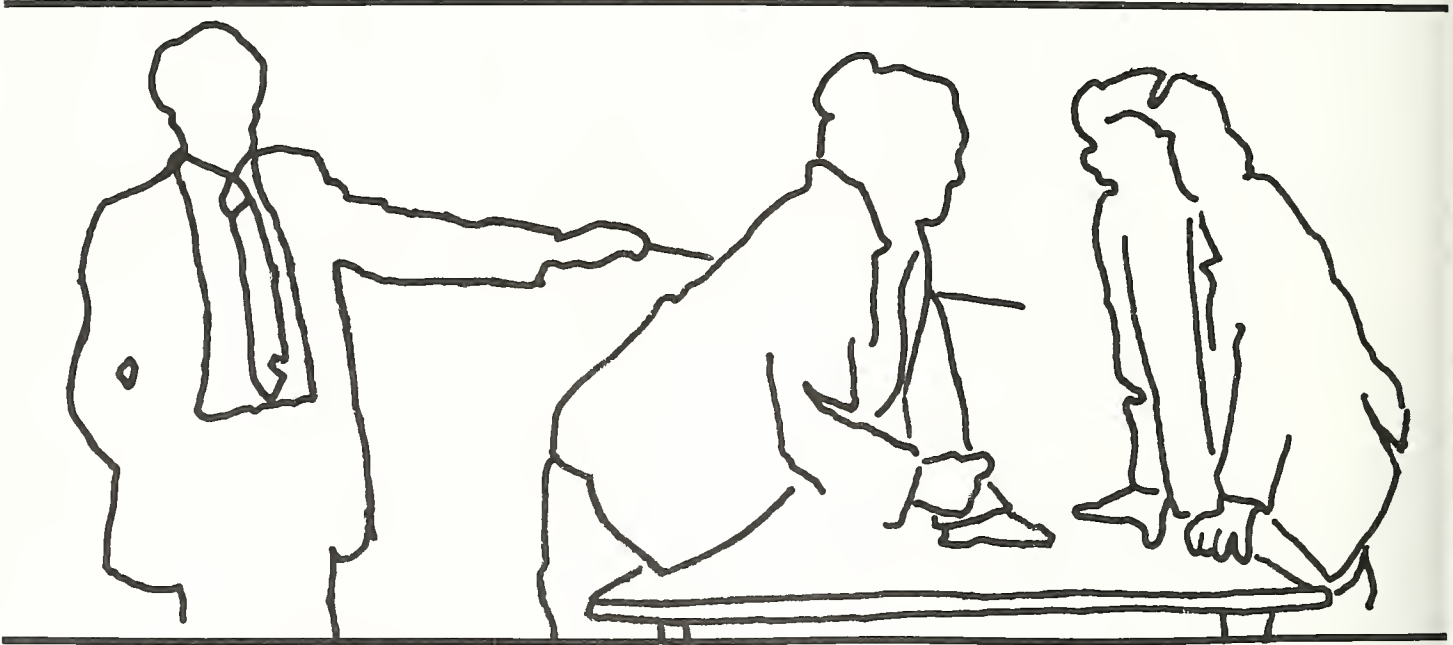
CP: We talked a little bit about the planner as being the best person to be the mediator. Do you ever think it's appropriate for the city to hire a neutral mediator?

Morrow: In the Rosemary Square process, the town has hired numerous consultants to evaluate various parts of the project, but the mediator-interpreter role, by definition, is played by the town council, the town planning board, the appointed commissions and the town staff. That's their job—to perform that function for the town. We have a representative form of government where people are elected or hired to represent the public interest, and to replace that or circumvent that process is a poor use of time and energy, and an abdication of responsibility.

CP: Would your stance change if the town staff's recommendations were biased in order to satisfy politicians' desires, rather than guided by good planning principles?

be in the best interest of the town at all to listen to the squeakiest wheel.

There's a vast silent majority in every town that needs to be represented. A small vocal minority should not run a town. In some cities, it's a development group that's the small vocal minority. In other places, it's a citizen lobby group that only wants trees and parks. Even at Hilton Head, which was done marvelously well, the people that bought houses there and retired there wanted to burn the bridge and keep the next guy out once they got their piece of the island. In Chapel Hill, neighborhood groups, who love their neighborhood, want to prevent any other neighborhoods from being built. It's a continuing process, and as long as there's change there are going to be people



Morrow: I don't know that there needs to be a neutral party. The town council is elected to represent the town in all matters of public interest. And that's what they do. To the degree the decision makers—the council—need information, then citizen groups, advisory boards, the town staff, the development company itself, outside consultants, and others can be called in to provide that information. I think that the town council needs to make decisions, live by those decisions, honor commitments and move forward with things, and not defer complex issues to easily distorted public referendums or to listen only to whomever shows up at a town meeting. It may not

with a vested interest in the community as it is, who will oppose any further change.

CP: In your negotiations with planners, do you observe a rift between planners and developers because planners tend to have a long range view of a community whereas a developer is responding to a market gap?

Morrow: A market gap is something that doesn't exist that people want. The planner's job is to interpret what the people want, just like developers do. And where there are disagreements, that's where the discussion needs to take place. I think it's dangerous for both

developers and planners to assume that they have the exact definition of what people *should* want, as opposed to what they *do* want. It's much better to listen to people and see what they want, and then provide it in the most pleasant way.

CP: It seems one solution to a long, drawn out approval process is a tighter zoning ordinance, though on occasion that leads to formula-like development. Perhaps a better solution is to include more flexible zoning devices that invite negotiations. The PUD (Planned Unit Development) comes to mind. What is your opinion?

Morrow: I think the Planned Unit Development process is the most healthy thing we have right now in the development industry. It enables you to have different solutions to problems—different ways to get traffic through, different ways for recreation to be put into a community, different rules for setbacks and so on. I think most of our development ordinances are drawn assuming that everybody is going to build the same product on exactly flat land in exactly the same relationship to other major facilities in town. And it's just not true. We need a lot of flexibility to do things well and create pleasant environments. The very tight development ordinances, designed to avoid ever having a capacity problem—with traffic, for instance—over-design, over-engineer and over-build everything. Many of the streets in this country have been built based on the 1954 turning radius of a hook and ladder fire truck. A cul-de-sac at the end of the street has to have a hook and ladder fire truck turn around at the end of it when, in fact, the houses are only twenty feet tall, and fire trucks can back up. It makes a very unpleasant neighborhood when all of the green space is taken up in asphalt.

I think we need to look at pleasantness issues and spend more time saving trees than we do building overly-wide neighborhood streets, which often result from implementing a rigid uniform zoning ordinance.

CP: Do you think there should be limits on the length of time over which the approval process takes place?

Morrow: I think that it should be reasonable, because very lengthy processes drive up the cost of the product. Except in complex, large proposals, the only reason you have long, drawn out approval processes is because the vision of what the town wants to look like is not clear. If a town can establish very clear guidelines for what is valuable in the community, up



W. Whitfield Morrow, president of Fraser, Morrow, Daniels & Company

front—whether it's trees or rustiness or open space—the process would be greatly improved. In this way, if you bring in a project that accomplishes the general goals and meets minimum safety standards *already* established, we can go from there. That's a much better process than setting maximum standards for everything and not specifying the aesthetic end of what we want.

When you have one set of official rules that evolve into a set of economics for a community—a set of land prices and other things—and then those rules are not administered consistently, someone may buy a piece of land for \$5 a square foot when it's only worth \$3 a square foot after the planning board gets through with it. That's a major problem, and those kind of economic consequences are things that force developers, even well-meaning developers, into law suits. That's where the process really gets bad, when the set of rules for the community are not administered consistently and leave people wide open for major problems. When a group of people can get together and agree on what they want their neighborhood or town to be like, then it's easy to follow those rules. □